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Attorneys for Defendants  
CITY AND COUNTY OF HONOLULU  
and THAYNE COSTA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

SARAH VARGAS,

Plaintiff,

vs.

CITY AND COUNTY OF  
HONOLULU, DAVID OH, and  
THAYNE COSTA,

Defendants.

CIVIL NO. CV19-00116 LEK/WRP

DEFENDANTS CITY AND COUNTY  
OF HONOLULU AND THAYNE  
COSTA'S REPLY TO PLAINTIFF'S  
RESPONSE TO DEFENDANTS CITY  
AND COUNTY OF HONOLULU AND  
THAYNE COSTA'S MOTION TO  
BIFURCATE TRIAL; CERTIFICATE OF  
SERVICE

Trial Date: February 16, 2021

DEFENDANTS CITY AND COUNTY OF HONOLULU AND  
THAYNE COSTA’S REPLY TO PLAINTIFF’S RESPONSE TO  
DEFENDANT CITY AND COUNTY OF HONOLULU’S  
AND THAYNE COSTA’S MOTION TO BIFURCATE TRIAL

Defendants City and County of Honolulu and Thayne Costa hereby submit their reply to Plaintiff’s Response Defendants City and County of Honolulu and Thayne Costa’s Motion to Bifurcate Trial (“Response”), Filed September 8, 2020.

I. ARGUMENT

Plaintiff does not oppose bifurcation. *See* Response, Doc. No. 196, at 2. Claims against Thayne Costa should go first for efficiency and judicial economy reasons. *See* Defendants City and County of Honolulu and Thayne Costa’s Motion to Bifurcate Trial, Doc. No. 188, at 6 (explaining that if Plaintiff does not prevail on the underlying tort(s) or constitutional violation, then the need for a trial on the *Monell*/negligent training claims is moot). The claims against Thayne Costa that should be tried in the first trial consist of the following:<sup>1</sup>

- Count V, negligence against Thayne Costa, vicarious liability for the City
- Count VII negligent infliction of emotional distress against Thayne Costa, vicarious liability for the City

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<sup>1</sup> To find liability, a jury must find that there was a sexual assault. In other words, Thayne Costa’s liability is predicated on Oh’s liability under Count IV for sexual assault. *See Ferrari Fin. Servs. v. Yokoyama*, No. 18-00136 JAO-RLP, 2018 U.S. Dist. LEXIS 165507, at \*5-6 (D. Haw. Sep. 6, 2018).

Then, direct liability claims against the City should be tried in the second trial if the jury found a sexual assault/constitutional violation occurred. These consist of the following:

- Count I, *Monell* 14<sup>th</sup> amendment violation claim premised on facially deficient training
- Count II, *Monell* 4<sup>th</sup> amendment violation claim premised on facially deficient training
- Count VI, negligent training/supervision for Thayne Costa's conduct

## II. CONCLUSION

Based on the foregoing, the City and Thayne Costa respectfully request that the motion be granted.

DATED: Honolulu, Hawai'i, September 15, 2020.

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